

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

DAVID WALKER, et al.,  Plaintiffs,   vs.  OREM CITY, et al.,  Defendants.	MEMORANDUM DECISION AND ORDER DENYING PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF TYREE'S SHOTGUN    Case No. 2:02-CV-253 TS
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Tyree Lamph is David Walker's brother-in-law. When David Walker pulled into the driveway, Mr. Lamph exited his home carrying a shotgun with him. Mr. Lamph put the gun away when he saw the police officers' cars behind David Walker's car. The officers involved did not see the shotgun until after the shooting.

Plaintiff argues that this matter is irrelevant and that its probative value is substantially outweighed by its prejudicial effect. Plaintiff argues that a bystander's perceived threat of harm is irrelevant to determine whether an officer's actions were objectively reasonable in light of the surrounding facts and circumstances. Defendants argue that the fact that Mr. Lamph carried a gun is probative of the circumstances surrounding the shooting and should be admitted.

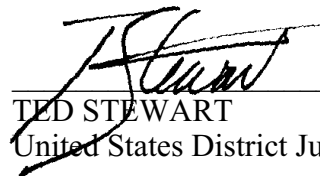
The Tenth Circuit has explained that “[t]he reasonableness of an officer’s conduct must be assessed from the perspective of a reasonable officer on the scene . . . [w]ho may be forced to make split-second judgments under stressful and dangerous conditions.”<sup>1</sup> Here, the evidence concerning the shotgun is probative to the events of that night. The probative value of the evidence concerning the shotgun is not substantially outweighed by its prejudicial effect.<sup>2</sup> Further, evidence of the shotgun will be admitted anyway as a result of the Court’s ruling on other motions in limine, specifically in relation to the Court’s ruling on the Master Case Report and the statement given by Mr. Lamph at the scene.

It is therefore

ORDERED that Plaintiff’s Motion in Limine to Exclude Evidence of Tyree’s Shotgun (Docket No. 258) is DENIED.

DATED October 5, 2007.

BY THE COURT:

  
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TED STEWART  
United States District Judge

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<sup>1</sup>*Walker v. City of Orem*, 451 F.3d 1139, 1159 (10th Cir. 2006) (quoting *Medina v. Cram*, 252 F.3d 1124, 1131 (10th Cir. 2001) (quotations omitted)).

<sup>2</sup>Fed.R.Evid. 403.